IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4161 OF 2006

Ranjana Nathuram Baikar and ors. ..Petitioners

Vs.

Deepak Laxman Baikar ..Plaintiff

Ms. Jyoti Chavan for petitioners.

CORAM: B.H. MARLAPALLE, J.

Date : July 17, 2006.

P.C.:

1. Heard Ms. Chavan the learned counsel for the petitioners who are the defendants in Regular Civil Suit No.53 of 2003. In the said suit the application for temporary injunction came to be rejected by the learned Civil Judge, Junior Division at Chiplun vide the Judgment and Order dated 29/3/2004 and the said order was carried in Misc. Civil Appeal No.8 of 2004. The learned Additional District Judge at Khed vide his Judgment and Order dated 29/4/2006 was pleased to allow the said appeal by setting aside the trial court's order. While allowing the application for temporary injunction, the Lower Appellate Court has restrained the defendants from obstructing the

plaintiff's lawful possession over the suit land pending the hearing and final disposal of the suit. In addition, the trial court has been directed to decide the suit as expeditiously as possible.

2. The suit property originally belonged to one Tatya who had three sons, namely, Vithu, Laxman and Deoji. Defendant No.1 is the wife of late Nathuram, son of Vithu and defendant no.2 is her son and defendant no.3 is her daughter, whereas the plaintiff is one of the sons of Laxman. The plaintiff claimed that the suit property was in his lawful possession and he derived the title for the suit property from his father Laxman who had been given the suit property by way of partition amongst three brothers. The trial court while considering the application for temporary injunction disregarded the revenue record in terms of 7/12 extracts and proceeded to rely upon the affidavits which were submitted before some other forum. The trial court also noted that the plaintiff did not implead his brother Krushna and other brothers as the defendants and also noted that the defendants did not bring on record any revenue documents to

establish that they were the co-sharers of the suit property (agricultural land).

3. The Lower Appellate Court after hearing the parties and on perusal of the documents noted that the defendants in the Written Statement did not claim that late Laxman i.e. the plaintiff's father was either a tenant of the suit land or he was holding the land in the capacity of Karta of the joint Hindu family and, therefore, the revenue record placed by the plaintiff along with application for injunction would be required to be considered in view of the presumption under Section 157 of the Maharashtra Land Revenue Code, 1966. It held that the record was of 50 years continuous possession, prima facie, of the plaintiff over the suit land and this record in the name of Laxman and thereafter his son i.e. the plaintiff and his other brothers could not be discarded for the purpose of temporary injunction and more so when the defendants had no revenue record placed before the trial court in support of their contentions that they were in joint possession of the suit land. The defendants had relied upon two affidavits, namely, one

of Dhondu Laxman Baikar affirmed on 24/7/2003 and another that of Sakharam Deoji Baikar affirmed on 11/9/2003. Even if one of them was affirmed before the trial court, such an affidavit could not be accepted for discarding the revenue record continuously for a period of 50 years.

4. Under the circumstances no interference is called for in the impugned order passed by the Lower Appellate Court in this petition under Article 227 of the Constitution. The petition is, therefore, rejected summarily. The Lower Appellate Court has expedited the trial of the suit. It is hereby directed that the suit be heard and decided preferably by 31st May, 2007.

(B.H. Marlapalle,J.)